

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

MDL No. 2419
Master Dkt.: 1:13-md-02419-FDS

THIS DOCUMENT RELATES TO:

All Actions

MOTION FOR ENTRY OF REVISED CASE MANAGEMENT SCHEDULE

The Plaintiffs' Steering Committee ("PSC") moves the Court to enter the following amended case management schedule. The revised schedule serves three purposes: (1) it sets specific dates for events that were previously set to occur in particular seasons (*e.g.* Fall 2013); (2) it maps out, in broad strokes, the bellwether trial process contemplated by the PSC; and (3) it addresses the reality that discovery has been somewhat stalled in light of unresolved subpoena objections and, we believe, subpoena recipient's and other defendants') deliberation about whether to participate in the mediation program. The revised schedule also reflects the PSC's position that – while we have agreed to continuing the the stay of discovery as to NECC and the Affiliated Defendants for one more month – they stay cannot remain open-ended and should be revisited at the October status conference (and monthly thereafter).

I. PROCEDURAL BACKGROUND

On June 28, 2013, the Court entered MDL Order #6, establishing case management procedures and issues.¹ MDL Order #6 also included a case management schedule setting deadlines for discovery, a mediation program, and the filing of a master complaint.

Since then, the PSC has issued scores of subpoenas to hospitals, clinics, doctors, and

¹ ECF # 209.

other healthcare providers. Some recipients objected. The Court issued an order resolving some issues² and referred the remainder of the subpoena objections to Judge Boal.³

The Court also entered an order establishing a mediation protocol.⁴ Defendants and potential defendants have until September 23, 2013 to opt into the mediation program.

At the last status conference, the PSC told the Court that the schedule needed to be revisited in light of the apparent need to take discovery from NECC and the Affiliated Defendants. The PSC advised the Court that it would meet and confer with all defendants in an effort to jointly present a proposed case management schedule.

Since that time, the subpoena objections have not been resolved. Judge Boal set a status conference on those objections for September 25, 2013—two days after the deadline for opting in to the mediation program.⁵

II. THE REVISED SCHEDULE

The PSC sent a copy of its proposed schedule, and asked for comments from, all defendants of record in the MDL and all clinics who had filed limited appearances in the MDL for the purpose of objecting to the PSC's subpoenas. We invited everyone (including the Trustee and the Creditors' Committee) to send comments by email and participate in a meet and confer. We twice changed the time of the meet and confer to accommodate schedule conflicts. And on September 9, 2013, the PSC met and conferred with the defendants (both affiliated and unaffiliated), the Trustee, the Creditors' Committee, and at least one pain clinic about its proposed revised case management schedule.

² ECF # 370.

³ *Id.*; ECF # 396.

⁴ ECF # 394.

⁵ ECF #408.

The scheduled proposed below addresses all comments and changes received from all interested parties.

NECC and the Affiliated Defendants have no objection to the proposed schedule.

III. CONCLUSION

The PSC asks that the Court enter this revised schedule, as set forth in the attached proposed order.

Dated: September 12, 2013

Respectfully submitted,

/s/ Kristen Johnson Parker

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, Kristen Johnson Parker, hereby certify that I caused a copy of the foregoing Motion for Entry of Case Management Schedule to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: September 12, 2013

/s/ Kristen Johnson Parker
Kristen Johnson Parker, BBO # 667261